

**STATEMENT
OF
SENATOR DANIEL K. INOUE
CHAIRMAN
COMMITTEE ON INDIAN AFFAIRS
BEFORE THE
JULY 25, 2002
HEARING
ON
THE REPORT OF THE DEPARTMENT OF THE INTERIOR
SUBMITTED TO THE CONGRESS
ON
JULY 2, 2002
ON THE
HISTORICAL ACCOUNTING OF INDIVIDUAL
INDIAN MONEY ACCOUNTS**

The Committee on Indian Affairs meets this morning to receive testimony on the Report of the Department of the Interior submitted to the Congress on July 2, 2002 on the Historical Accounting of Individual Indian Money Accounts pursuant to Conference report 107-234 on the Interior Appropriations Act for Fiscal Year 2002.

One of the most fundamental duties of a trustee is the duty to the beneficiary to “keep and render clear and accurate accounts with respect to the administration of the trust”. [Restatement (Second) of Trusts, § 172.]

The United States’ duty as trustee for the funds held in trust for individual Indians and Indian tribes requires that the United States provide an accounting to the beneficiaries.

This duty has been the subject of several House-Senate conference reports on Interior appropriations acts, the 1994 American Indian Trust Fund Management Reform Act, and currently, in class action litigation brought on behalf of individual Indian money account holders asserting as one of several claims against the United States, that the United States must provide the beneficiary account holders with an accounting. [Cobell

v. Norton]

As a function of treaties and the course of dealings between the United States and Indian tribes, the United States holds legal title to lands held in trust for individual Indians as well as Indian tribal governments.

The revenues derived from trust lands are also held in trust by the United States for the benefit of individual Indians and tribal governments.

Over the last twenty years, at the request of this Committee, the General Accounting Office has monitored the efforts of the Department to address the management of funds held in trust for individual Indians and Indian tribes.

In August of 2001, the U.S. General Accounting Office reported to the Committee that an independent public accounting firm audit of Indian trust funds for fiscal year 2000 showed that the Department of the Interior was maintaining approximately 1,400 accounts for 315 Indian tribes with assets in excess of \$2.6 billion, and over 260,000 individual

Indian money (IIM) trust fund accounts with a balance of \$400 million as of September 30, 2000.

Receipts are deposited to these accounts primarily from land use agreements, royalties on natural resource depletion, enterprises related to trust resources, judgment awards, settlement of Indian claims, and investment income.

However, the audit report noted that reliance cannot be placed on the balances reflected in the trust funds accounts until tribal accounts are reconciled and/or resolved through negotiation and settlement and class action litigation on behalf of the individual Indian money account holders is resolved [*Cobell v. Babbitt*, retitled *Cobell v. Norton*].

Today, we find ourselves at a critical crossroads as we consider the Department's report and the information it provides to the Congress on the uncertainties associated with the conduct of an historical accounting.

First, there is the uncertainty associated with previously-identified gaps in the records and documents upon which an historical accounting would necessarily rely.

Second, there is the uncertainty associated with the time that will

be involved in conducting a complete historical accounting.

Third, there is the uncertainty associated with the projected costs of an historical accounting.

The Department's report projects that the total cost of an accounting would be \$2.4 billion, with an error rate in the projected cost of minus five percent or as high as plus twenty-five percent.

The Department's report sets forth the methodology that the Department anticipates employing in conducting the historical accounting of individual Indian money accounts.

What the Department's report does not address is whether there are other methodologies that might be applied, and whether alternative methodologies might entail less time, less uncertainty, and/or less cost.

Some have suggested that with all the gaps in information, the lost and destroyed documents, it is not even possible to conduct a complete historical accounting.

Beginning in 1995, and in subsequent testimony before this Committee, the General Accounting Office suggested that the Congress consider a settlement of claims against the United States for an

accounting.

We have called upon the General Accounting Office and our third panelist today to assist the Committee in developing an understanding of whether these matters lend themselves to a resolution through a legislative settlement.

However, even if the Congress and the interested parties were to agree that the path to settlement of claims against the United States is the preferable path to pursue, the duty on the part of the trustee to provide an accounting to the beneficiaries remains.

These are the challenging issues that are the impetus for the Committee's hearing today, and we look forward to the testimony that will be presented.